IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

[Chapter VIII, Rule 32(2) (b)]
Description of case

Civil Revision No. 87 of 2003 **Decided on: 7th March, 2006**

A.F.R. (Approved for Reporting)
Not approved for reporting

Date 07.03.2006

(Initial of Judge)

Note: Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Revision No. 87 of 2003

Praveen Chandana
S/o Sri Basant Lal Chandana
R/o 27, Chakrota Road, Dehradun.

…….. Revisionist

Versus

1. A.D.J. / F.T.C. VIII, Dehradun.
2. Shurveer Singh Bisht,
   S/o Sri Balvant Singh Bisht,
   R/o Faltoo Line, Dehradun.

…… Respondent

Mr. Parikshit Saini, learned counsel for the revisionist.
Mr. Manoj Tiwari, Advocate assisted by
Mr. Pradeeo Hiriya, learned counsel for respondent No. 2.

Hon'ble Prafulla C. Pant, J.

This revision preferred under Section 25 of the Provincial Small Cause Courts Act, 1887, is directed against the judgment and decree dated 14.11.2003, passed in S.C.C. Suit No. 02 of 1993 by learned Judge, Small Causes Court / Addl. District Judge / Fast Track Court VII, Dehradun.

2) Brief facts of the case are that plaintiff / respondent is owner and landlord of house No. 12, Followers Line, Dehradun (old No. 10, Followers Line, Dehradun). As per the plaint case, the said property was constructed in the year 1985 and house tax was assessed w.e.f. 01.04.1985, as such, the accommodation is outside the purview of the U.P. Urban Buildings (Regulation of Letting, lent and Eviction) Act, 1972. Plaintiff agree to let out the above accommodation

(shop) to the defendant on rent at the rate of Rs. 500/- per month for a period of three years w.e.f. 01.11.1989. A lease deed was got executed between the parties and the same was registered. On expiry of three years i.e. 31.10.1992, the defendant's tenancy stood terminated. It is pleaded in the plaint that the defendant failed to vacate the shop in question and is liable to pay the damages / mesne profits. Instead, the defendant filed a civil suit against the present plaintiff for injunction restraining him not to dispossess him from the property in question. The plaintiff finally got served a notice dated 25.11.1992 terminating the tenancy of the defendant under Section 106 of the Transfer of Property Act, 1882. However, the defendant did not vacate the premises, hence, the suit for ejectment and arrears of rent and mesne profit.

3) The defendant / revisionist contested the suit before the trial court and filed his written statement in which he admitted the tenancy and also the execution of lease deed dated 01.11.1989. However, he disputed that the building is not old. It is pleaded in the written statement that provisions of the U.P. Act No. 13 of 1972 are applicable to the shop in question. It is further pleaded in the written statement that the plaintiff fraudulently got inserted several conditions in the lease deed. It is also alleged in the written statement that the house in question is a construction of the period prior to 01.04.1973 and Suit No. 459 of 1984 between the plaintiff and his brothers regarding family partition is not binding on the answering defendant. The defendant also filed a counter claim for damages and special costs.

4) The trial court formulated following points of determination in the suit:

1) *Whether, the defendant was inducted by the plaintiff as a tenant for fixed period. If so, its effect?*

2) *Whether, the notice dated 25.11.1992 sent by the plaintiff is illegal?*

3) *Whether, the tenancy in question stood terminated automatically on expiry of the period for which the accommodation was let out?*

4) *Whether, the provisions of U.P. Act No. 13 of 1972 are applicable to the accommodation in question?*

5) *Whether, Rs. 40,000/- is outstanding to be paid by plaintiff to the defendant?*

6) *Whether, lease deed dated 01.11.0989 was got executed fraudulently and is the same null and void?*

7) *To what relief, if any, the plaintiff is entitled?*

8) *To what relief, if any, the defendant is entitled?*

5) Learned Judge Small Causes Court after recording evidence and hearing the parties, held that the tenancy was a fixed period tenancy for a period 01.11.1989 to 31.10.1992, and on the expiry of said period mentioned in the lease deed, the tenancy stood terminated. It is also held by the trial court that there is no illegality in the impugned notice sent by the plaintiff. The lower court also found that the accommodation in question being new one, constructed in the year 1985 is outside the purview of the provisions of the U.P. Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972. However, the trial court found true that a sum of Rs. 20,000/- was got deposited with the plaintiff by

defendant at the time of beginning of tenancy as security from the defendant. As to the counter claim, the trial court held that the amount of security could be adjusted towards the rent and mesne profits, due from the defendant. With these findings, the trial court decreed the suit for ejectment and for Rs. 1,210/- as arrears of rent and Rs. 1,500/- towards costs and, thereafter, w.e.f. 01.11.1992, at the rate of Rs. 600/- per month as mesne profits.

6) I heard learned counsel for the parties and perused the record.

7) Learned counsel for the revisionist argued that the fixed profit tenancy does not mean that the tenancy stood terminated on the expiry of the period for which the accommodation was let out. In this connection, he contended that the tenancy even after expiry could be treated to have been extended. This Court is of the opinion, that had it been a case where the landlord by express or implied conduct accepted the continuance of tenancy after the expiry of the period mentioned in the lease deed, it could have been said that even after expiry of the 31st October, 1992, the tenancy in question continued. But it is not the case here. There is nothing on record to show if the plaintiff accepted the defendant as his tenant after expiry of three years of tenancy. It has nowhere stated by the defendant that he tendered rent for November 1992 or onward or that such rent was accepted by the plaintiff. Therefore, in such circumstances, I see no force in the contention of learned counsel for the defendant / revisionist.

8) Second argument advanced on behalf of the defendant / revisionist is that the building of which the shop in question

is a part, existed even from the period prior to 1973 and, as such, the same cannot be said to be new accommodation and provisions of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 are applicable to it. But this Court finds that the plaintiff has produced ample evidence before the trial court showing that the shop in question was constructed in the year 1985 and for the first time house tax was assessed by the Municipal Board w.e.f. 01.04.1985. This fact gets corroboration also from the document filed on behalf of the defendant / revisionist. Therefore, I see little force in the submission of learned counsel for the defendant / revisionist. It is pertinent to mention here that the Explanation to sub-section (2) of Section 2 of the U.P. Act No. 13 of 1972 provides that the construction of a building shall be deemed to have been completed on the date of which the completion thereof is reported to or otherwise recorded by the local authority having jurisdiction. It further clarifies that in case of a building subject to assessment, the date on which the first assessment thereof comes into effect shall be the date of construction of the building. It further provides that where the said dates are different, the earliest of said dates would be treated to be the date of construction of the accommodation. The defendant could not show to the Court if in respect of the shop in question house tax was assessed prior to 01.04.1985. The plaintiff has come up with a categorical case that after he got the portion in the building in the family partition in the year 1984, he got constructed to shop in question, in 1985. As such, the findings of the trial court do not suffer from any illegality in this matter.

9) The third submission advanced on behalf of the defendant / revisionist is that there was no default of

payment of rent to the plaintiff and his tenancy cannot be terminated by serving notice under Section 106 of the Transfer of Property Act, 1882. I see no force in the contention advance in this argument, because when the provisions of the U.P. Act No.13 of 1972are not applicable, the plaintiff is well within his right to terminate the tenancy by serving notice under Section 106 of the Transfer of Property Act. It does not require condition of default in payment of rent to determine the tenancy under that Section. However, I do find substance in the submission to the extent that the security deposited by the defendant / revisionist to the tune of Rs. 20,000/- was subject to the adjustment towards the rent due from defendant, and the trial court has already mentioned it, that this amount deposited in court and security with the plaintiff would be adjusted against the arrears of rent and mesne profits, for which the suit is decreed. The rate of mesne profits can also not be said to be excessive as the same is not at too much variance from the rate of rent at which the shop was let out three years back before the expiry of tenancy.

10) For the reasons as discussed above, this revision is liable to be dismissed. The same is dismissed. However, the defendant / revisionist is allowed to vacate the premises in question by 30th of April, 2006, failing which the plaintiff / respondent would be at liberty to get the decree executed. No order as to costs.

(Prafulla C. Pant, J.)

Dt. March 7, 2006.
H. Negi